



South African Code of Professional & Ethical Conduct

Presenters:

Keith Engel

Adrian Modikwe

YOUR KEY TO THE TAX COMMUNITY

Introduction

The South African Institute of Taxation has conducted a full review of current professional and ethics standards. The newly proposed standards are closely tailored to echo international standards of practice, professionalism and ethical conduct and cater specifically to the broader tax profession.

The tax profession plays a key role in contributing to a healthier tax and compliance system while upholding the profession's reputation and taking account of the public interest right to representation.

Our primary objectives:

- To clarify the meaning of Professionalism and elevate the status of the tax profession;
- To meaningfully upgrade the tax profession through the re-introduction of key principles of professionalism and ethics; and
- To create a detailed framework within which Tax professionals operate with integrity, thus improving ethical morale within the tax profession and by extension differentiating tax professionals from untrained tax preparers.

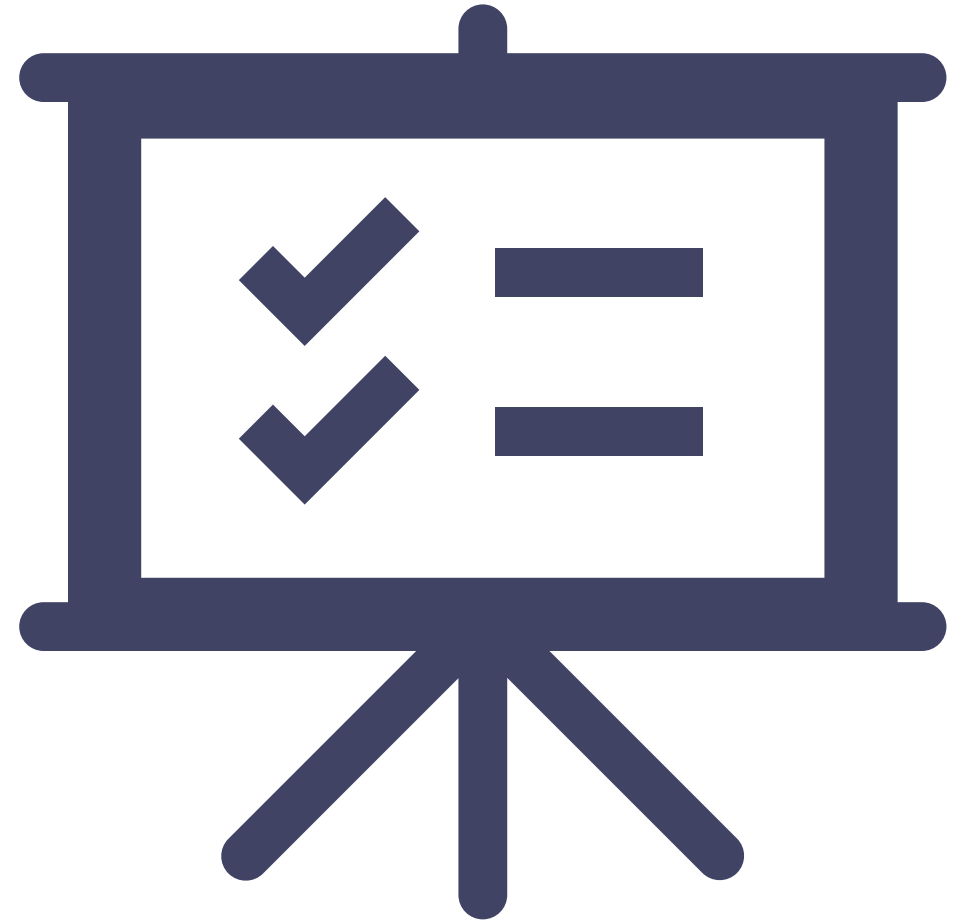
Stakeholders and Applicability of Proposed Professional and Ethical Standards

Relevant Stakeholders	
	The client-taxpayer
	Government agencies including the SARS
	SAIT Members
	The general public
	Other Professional Bodies

Outline of Topics

Charging for Professional Services

- Basis for charges and expenses
- Contingent fees and Value Billings
- Disclosure of Commission
- Retainers and Advance Payments
- Debt Collection and Fee Disputes



Professional Fees

Holding Clients' Money

Holding client funds is generally not advised.

- Maintain separate Client account; and
- Proper records of transactions.

Fees for Services Rendered

Transparency on fees charged is vital.

- Complexity of work;
- Time devoted to work; and
- The client relationship (act in good faith and in the best interests of the client).

General Principles

Terms relating to client money should be:

- Detailed in engagement letter and variation clauses;
- Provide clarity on basis of fees charged;
- Outline rules on managing expenses;
- Based on good judgment and commercial justifiability; and
- Properly negotiated payment arrangements (i.e., Fixed fees or time/expense-based).

Transparency in all billing and invoicing matters is critical in a space with little guidance in terms of ethical standards.

Contingent and Percentage-based Fees

Key Ethical Concern

- potential for client abuse
- Disproportionate fees to the work undertaken; and
- Compromised practitioner objectivity (conflict of interest)

Key Safeguards: Section 2(2) Contingency Fee Act

- Outlines standard rates chargeable
- Permits contingency fees, provided the amount is less than 25% of the principal award/monetary claim

Reasonableness Test

Ought to be based on utility factors:

- Nature of monetary claim;
- Nature and complexity of work;
- Type and Size of Client;
- Actual v.s Potential prejudice to Client;
- Actual v.s Potential risk to Practitioner; and
- Client affordability profile.

Some scenarios: *[discussion point]*

Disclosure of Commission Earned

Principal Rules

- Full disclosure of any possible commission or reward receivable by practitioner;
- Clear basis and justification for receipt of commission/reward must be established and communicated to client. I.e., third party client referral commissions;
- All terms of disclosure and commissions to be stipulated in engagement letter and/or necessary variation clauses/addenda; and
- Ensure compliance with controlling body Code of Conduct.



Retainers and Advance Payments

Permissibility

There is no objection to retainer arrangements or advance payments for professional services.

RETAINER AGREEMENTS

- Retainer arrangements are an alternative to fixed fees:
 - No additional fees charged for services;
 - Any additional fees for subsequent services rendered may be negotiated and agreed to in writing.

Basic Guidelines

- Carefully worded formal engagement letter;
- Clearly projected scope of work at engagement;
- Observe duty of care, including identifying potential conflicts of interest (Objectivity)

ADVANCE PAYMENTS AND DEPOSITS

- All applicable terms of payment on account for current work should be reasonable (workload and time-scale);
- Letter of engagement must set out terms of imposing interest on fees payable;
- Fee notes to be issued to client upon cessation/termination of services;
- Any advance payment for work not completed must be repaid

Basic Guidelines

- Ensure proper record keeping and accounting practices for any VAT on accounts

Fee Disputes

A member should take reasonable steps, including negotiation, to avoid disputes with clients over fees. Court action should be considered as a last resort.

Late Paying Clients

- Follow proper debt collection process of notification;
- Ensuring all billing communications are directed and received by the client;
- Allow for alternative payment arrangements based on reason for non-payment;
- Consider any appropriate interest and collection fees within applicable law;
- Consider cessation of services;
- Outstanding fees must not be settled from funds held on behalf of client; and
- Only once all debt collection avenues are exhausted, legal action may be appropriate.



Proposed SALT Ethics Committee

We have also undertaken to form a separate committee solely to focus on tax ethics on a recurring basis. Our goal is to obtain specialists from the following fields:

- Ethics and Practice Management;
- Legal (Tax and General);
- Risk Management Advisory;
- Tax Return Preparation, Submission and Compliance;
- Tax Advisory;
- Tax Dispute / Controversy Management; and
- In-house Risk Management.

Please [submit](#) your expression of interest to participate along with your resume to disciplinary@thesait.org.za so we can obtain your participation.